

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DELORIS MCLAUGHLIN

Claimant

VS.

AUTOMOTIVE CONTROLS CORPORATION

Respondent

Self-Insured

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Docket No. 233,793

ORDER

Respondent appeals from the July 16, 1999, Order on penalties of Administrative Law Judge Jon L. Frobish. Oral argument was held December 21, 1999.

APPEARANCES

Claimant appeared by her attorney, Roger A. Riedmiller of Wichita, Kansas. Respondent, a self-insured, appeared by its attorney, Stephen J. Jones of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record consists of the preliminary hearing transcript of October 21, 1998, with exhibits, the preliminary hearing transcript of May 26, 1999, with exhibits, and the motion hearing transcript of July 14, 1999, with exhibits, as well as the documents on file with the Director of Workers Compensation in this matter.

ISSUES

- (1) Did the Administrative Law Judge err in awarding penalties against the respondent for respondent's refusal to reimburse, to a private health care company, health insurance costs associated with certain medical bills paid by that health insurance company?
- (2) Does the Appeals Board have jurisdiction to hear this appeal?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter has now been to preliminary hearing on three occasions. At the October 21, 1998, preliminary hearing, the parties disputed whether claimant provided timely notice of accidental injury, whether claimant suffered accidental injury arising out of and in the course of her employment on the dates alleged and whether claimant was entitled to additional temporary total disability compensation. In the Order of October 27, 1998, the Administrative Law Judge awarded claimant temporary total disability compensation, making a preliminary finding that the matter was compensable, and also ordered outstanding medical to be paid as authorized medical. Respondent paid all outstanding medical expenses presented at that preliminary hearing, including the outstanding balances due on several medical bills paid, in part, by the claimant's health insurance carrier.

After the October 27, 1998, Order, the health insurance carrier made demand upon respondent for reimbursement of the remaining medical expenses associated with the care and treatment provided to claimant from December 12, 1997, through May 8, 1998. These medical expenses were not submitted for payment at the time of the October 21, 1998, preliminary hearing, having earlier been paid by the health insurance carrier.

A Demand for Compensation was served upon respondent on June 4, 1999, requesting reimbursement from respondent to the health care provider. This demand contained a list of the medical bills already paid. The list specifies the particular health care provider, and the total amount paid to that health care provider. Neither the exhibits attached to that preliminary hearing nor the demand itemizes the medical bills or provides a detailed explanation of the services provided.

Claimant alleges that the respondent's failure to pay the medical bills on demand violates the provisions of K.S.A. 44-512a and allows for a civil penalty to be assessed against the respondent in the event compensation, including medical compensation, which has been awarded under the Workers Compensation Act, is not paid when due.

Respondent contends that the medical bills already paid by the health insurance carrier were not due. Respondent further contends the bills submitted at the preliminary hearing did not include the bills already paid by the health insurance carrier and, therefore, the Order issued from the October 1998 preliminary hearing has no effect on those bills. Finally, the respondent contends that the demand made pursuant to K.S.A. 44-512a was not specific and does not delineate those medical bills.

Claimant contends that this appeal is beyond the jurisdiction of the Appeals Board. The Board disagrees. K.S.A. 1997 Supp. 44-551 allows Appeals Board jurisdiction over all final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto. The assessment of penalties constitutes a final order by an administrative law judge and is, therefore, reviewable by the Workers Compensation Appeals Board from a preliminary hearing. Waln v. Clarkson Constr. Co., 18 Kan. App. 2d 729, 861 P.2d 1355 (1993).

K.S.A. 44-512a obligates that any demand for payment of medical bills must set forth with particularity the items of disability and medical compensation claimed to be owed and past due. The Appeals Board finds the demand submitted by claimant at the preliminary hearing is insufficient to satisfy the requirements of K.S.A. 44-512a, as it did not set forth "with particularity" the medical bills involved.

In addition, the Order of October 27, 1998, does not specify what bills are due and owing. It merely states that "outstanding medical is ordered paid as authorized medical." The Order of the Administrative Law Judge orders only those medical bills which are outstanding to be paid as authorized medical. It does not discuss medical bills already paid by the health insurance carrier and makes no mention of reimbursement to the health insurance carrier.

For the above reasons, the Appeals Board finds that the Order of the Administrative Law Judge assessing penalties against the respondent should be reversed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated July 16, 1999, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Stephen J. Jones, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director